IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Short Cause Suit No. 1325 of 1978

The National Industries Corporation Limited ..Plaintiffs

vs.

1. M/s Electro Gravure & anr. ...Defendants

Ms.S.K.Srivastava i/b M/s Consulta Juris for plaintiffs.

CORAM: S.C.DHARMADHIKARI J
26th September,2007

P.C.

1. The National Small Industries Corporation has filed this suit against the defendants who were earlier represented by the Advocate whose name appears on board. Subsequently, it was informed that the Advocate has expired and, therefore, notice was directed to be issued to the defendants. That notice was returned with the remark "left". Accordingly leave was sought to serve the defendants by publication and as the defendants are residing and/or carrying on business/working for gain, at Vadodara in Gujarat State, a request is made that publication be made in the local newspaper. That request was also accepted and time was granted to serve.

2. Accordingly, affidavit of publication is filed which is duly affirmed by the authorised officer of the plaintiff accompanied by the original advertisement.

3. In such circumstances, presumption in law that the defendants are duly served with the proceedings can be safely drawn.

4. Ms.Srivatsva appearing for the plaintiff states that despite filing the written statement, the defendants have not come forward to prosecute the suit. Even the issues have been drawn.

5. On the earlier occasion, request was made to take photo copies of the documents relied upon in the plaint as the originals are lost. That affidavit was filed and the chamber summons taken out was made absolute after hearing the plaintiff.

6. The plaint proceeds on the basis that the plaintiff supply machinary and tools to the persons on hire purchase basis who desire to expand the small industries. The plaintiff is established by the Government of India and the entire share capital is held by the Government of India.

7. The defendants are running a small industry. Defendant no.2 is the Proprietor of defendant no.1. The agreement of hire purchase is dated 12th October, 1972 whereunder the plaintiff let on hire the machine with option to purchase the same in accordance with the terms mentioned therein. The defendants agreed to pay the sum of Rs.1,50,585.03 as initial payment and thereafter further sums as stipulated in the agreement. The machine was duly sent and as stated in paras 4 and 5 indulgence was shown to the defendants after the parts which were broken during transit were reassembled. The amount was demanded from the defendants which liability is confirmed by the defendants by their letter dated 18th February, 1974. They paid only a sum of Rs.10,000/- and that is how the arrears mounted. In paras 7 and 8 of the plaint, the agreement of the defendants to pay the sum in installments was recorded. There are letters exchanged in that behalf, copies of which are also annexed. Ultimately, since the agreed amount was also not paid the arrears accumulated and demand notice was sent to which there was no reply. The statement of account was also forwarded showing the arrears as on 1st July, 1976.

8. It is in these circumstances that a decree is

claimed in the sum of Rs.6,71,205.03 with interest thereon from the date of filing of the suit as per particulars of claim annexed as Exh.E.

9. The defendants work for gain outside Mumbai but cause of action having arisen in Mumbai in as much as the plaintiff and defendants held negotiations, drew up of the agreement in Mumbai and even the payments thereunder became due and payable at Mumbai, leave under Clause 12 of the Letters Patent was applied for and granted.

10. Although the issues were drawn on the basis of the rival contentions, the defendants have not come forward to prove as to how this Court has no jurisdiction to entertain and try the suit or that the suit claim is barred by limitation. On the other hand upon failure of the defendants to prove issue nos. 1 to 5 by leading evidence, it is abundantly clear that the plaintiff has proved its case in so far as issue nos. 6 and 7. The plaintiff has filed the affidavit in lieu of examination in chief and documents along with the list on 6th August, 2007. The same is taken on record.

11. Despite notice being given to the defendants,

they have not remained present to cross examine the plaintiff on their case so also lead evidence to prove the issues, the burden under which has been thrown upon them. In such circumstances, there is no impediment in law for this Court to decree the suit as prayed. This Court has jurisdiction to entertain and try the suit so also the suit claim is within limitation. In the above circumstances, there will be a decree as prayed. Advocate’s costs and refund of court fees to be granted as per rules.

(S.C.DHARMADHIKARI J.)